

BEFORE THE CITY OF ATLANTA BOARD OF ETHICS

In the matter of:

Shirley Franklin .

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) Case Nos. CO-07-003
) CO-07-013
) CO-07-015
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Report of Ethics Officer

Recommendation

These ethics complaints should be dismissed because there is no probable cause to believe that Mayor Shirley Franklin has committed an act that violates the City's Code of Ethics. The Ethics Office's investigation found:

- Shirley Franklin does not have a financial interest in Franklin & Wilson Airport Concessions, Inc.
- None of her immediate family has, or has had, a majority or controlling interest in Franklin & Wilson Airport Concessions, Inc.
- The mayor's office does not review airport contracts involving companies that sublease retail space at Hartsfield-Jackson Atlanta International Airport.
- There is no evidence that Mayor Franklin has participated in any contract or decision related to a contract in which she or her immediate family has possessed a financial or personal interest.
- There is no evidence that she has failed to disclose a conflict of interest in connection with any decision or matter pending before her in which she or her immediate family has possessed a financial or personal interest.
- There is no evidence that she has failed to disclose income, assets, or other financial interests on her 2007 City Financial Disclosure Statement.
- There is no evidence that she has used the city's credit card or city funds for personal use or private advantage.

Findings

1. The complainant, George Anderson of Ethics in Government Group, has filed ethics complaints against Mayor Shirley Franklin alleging that she violated sections 2-802, 2-811, 2-812, 2-813, 2-814, and 2-818 of the Atlanta, Ga., Code of Ordinances; OCGA § 21-5-50; State Ethics Commission Opinion 2000-6; and the United States Constitution. He filed complaints on December 29, 2007; February 28, 2007; and March 27, 2007; and amended complaints on January 8, 2007; March 15, 2007; and April 20, 2007.

2. Mayor Franklin filed a response to the complaints on April 24, 2007, and May 31, 2007, through her legal counsel, Charles T. Huddleston. She also publicly released her 2006 federal tax return and provided her response to state ethics complaints that George Anderson filed with the State Ethics Commission.
3. Mr. Anderson was interviewed and has no personal knowledge of facts to support his claims; the exhibits attached to his complaints do not provide any independent verification for his allegations.
4. On April 30, 2007, the claims that Shirley Franklin violated OCGA § 21-5-50, the Georgia Ethics in Government Act, or opinions of the State Ethics Commission were administratively dismissed due to lack of jurisdiction.
5. The City of Atlanta Board of Ethics does not have jurisdiction over the claims of “reverse discrimination” and the “unconstitutional discrimination against whites” by city elected officials in violation of the Fourteenth Amendment of the United States Constitution.
6. The remaining claims allege that Shirley Franklin has participated in decisions in which her children have a financial interest, failed to adequately disclose conflicts of interest and financial interests, and used city funds for private advantage.

Financial Interests of Immediate Family

7. The City’s Code of Ethics defines “financial interest” as “any interest which shall yield, directly or indirectly, a monetary or other material benefit to the official or employee . . . or to the official’s or employee’s immediate family.” The term “immediate family” now includes the “spouse, domestic partner registered under section 94-133, mother, father, sister, brother, and natural or adopted children of an official or employee.” Atlanta, Ga. Code § 2-801 (2006). Prior to July 2006, the ethics code defined “immediate family” as the spouse, registered domestic partner, or dependent child of a city official or employee. See Atlanta, Ga. Ordinance 06-O-1368 (July 17, 2006).
8. Mayor Franklin has three adult children who are members of her immediate family under the Code of Ethics. They were not members of her immediate family under the ethics code’s earlier definition. Her former husband, David Franklin, is not a member of her immediate family under either definition; the couple divorced in 1986.
9. David Franklin is the chief executive officer of Franklin & Wilson Airport Concessions, Inc., which began operating as an airport retail concessionaire in 1994. The company currently operates two retail stores in Concourse A at Hartsfield-Jackson Atlanta International Airport under a subcontract with Hartsfield Air Venture. Telephone interview with Kyle Mastin, Concessions Manager, Department of Aviation, June 27, 2007.
10. Franklin & Wilson filed a voluntary petition for bankruptcy under chapter 11 on August 14, 2006. The bankruptcy petition states that David Franklin owns 75 percent of the stock and Ron Wilson owns 25 percent of the stock in the

corporation. See Voluntary Petition at 8, In re Franklin & Wilson Airport Concessions, Inc., No. 06-69773 (Bankr. N.D. Ga. Aug. 14, 2006).

11. Shirley Franklin does not have a financial interest in Franklin & Wilson.
12. The mayor's children do not have an ownership or financial interest in Franklin & Wilson. They previously had a financial interest in the company as employees, but their employment ended during 2006. Cabral Franklin is identified in the 2006 bankruptcy petition as the vice president of budget and planning and as an officer and director; he is listed as a financial analyst and board member in the company's 2002 bid proposal for the Concourse E duty free contract. Kai Franklin Graham is listed in the 2002 bid proposal as the director of national brands and a board member, and Kali Franklin is listed in the bankruptcy petition as an insider who received payments from Franklin & Wilson in the year prior to the filing. See Voluntary Petition at 2-3, 8, In re Franklin & Wilson, Case 06-69773; Concourse "E" Duty Free Proposal, Duty Free Air & Ship Supply Co. v. City of Atlanta, 07 FCDR 1462 (May 14, 2007), Record at 622.

No Participation in Contracts Affecting Franklin & Wilson

Airport Subleases

13. Section 2-812 prohibits the mayor from participating in any way in any contract when she knows or with reasonable investigation should know that she, her immediate family, or her immediate family's employer has a financial or personal interest in the contract. A "personal interest" is "any interest arising from relationships with immediate family . . . whether or not any financial interest is involved." Atlanta, Ga., Code §§ 2-801, 2-812.
14. Shirley Franklin was elected Mayor of the City of Atlanta in November 2001 and was sworn into office on January 7, 2002.
15. In 2002, Franklin & Wilson operated retail concessions at the airport in Concourse A under a sublease to Hartsfield Air Ventures and in Concourse E under a sublease to WH Smith Airport News Corporation. See Concourse "E" Duty Free Proposal, Contractor's Disclosure Form and Questionnaire at 3, Duty Free Air, 07 FCDR 1462, Record at 623.
16. The airport concession lease agreements under which Franklin & Wilson held subcontracts in 2002 occurred prior to Shirley Franklin's election as mayor. In 1994, the Atlanta City Council gave the mayor authority to enter into a contract with WH Smith Airport News Corporation for the principal concession retail lease in Concourse E at Hartsfield Atlanta International Airport. Resolution 94-R-0779 (May 2, 1994). In 1995, the City entered into a lease agreement with Hartsfield Air Ventures, a Georgia general partnership, for retail concessions at Concourse A and the atrium at the airport. WH Smith Airport News Corporation was the managing partner of Hartsfield Air Ventures. Resolution 03-R-1986 (Nov. 17, 2003). In addition, the City approved the assignment in 2000 of a lease in a bookstore café concession at the airport to Smith/FWAC Air Ventures, a joint venture. Resolution 00-R-1483 (Oct. 2, 2000).

17. Since 2002, Franklin & Wilson has sold or assigned its interest in various stores at the Atlanta airport, including a 2003 sale of its interest in several stores to Newburns Management Group, LLC, and a reassignment this year of its interest in a retail store in the atrium to the prime concessionaire, Hudson News Company. See Ethics Complaint CO-07-003, Exh. 38-Bill of Sale (Jan. 8, 2007); Telephone interview with Kyle Mastin, June 27, 2007.
18. There is no evidence that Mayor Franklin has participated in any decision related to these business transactions. The Office of the Mayor does not review airport subleases or approve sales, assignments, or other agreements related to subcontractors. The Department of Aviation, Department of Law, and Office of Contract Compliance review the subleases to verify the new subcontractor's qualifications and designation as a disadvantaged business enterprise. Telephone interview with Kyle Mastin, June 27, 2007.
19. In 2003, WH Smith requested the city's consent to sell its partnership interest in Hartsfield Air Ventures and its majority interest in Smith/FWAC Air Ventures to Airport Management Services LLC. Hudson News Company is the managing member of general partner Airport Management Services LLC. The City Council adopted the resolutions agreeing to the sales. Resolutions 03-R-1985, 03-R-1986 (Nov. 17, 2003).
20. There is no evidence that Mayor Franklin participated in the decisions related to the sale of WH Smith's businesses. The resolutions were returned without the signature of the mayor and approved by operation of law on November 26, 2003, as provided in City Charter section 2-403. See Resolutions 03-R-1985, 03-R-1986 (Nov. 17, 2003).

Duty Free Contract

21. In 2003, the City of Atlanta selected Duty Free Air and Ship Supply Company to construct and operate duty free shops in the international concourse at Hartsfield Atlanta International Airport. Franklin & Wilson was the minority partner on the bid. The bid proposals were evaluated by the Department of Aviation, Department of Finance, and Office of Contract Compliance. The city's decision was based on Aviation General Manager Benjamin DeCosta's recommendation to Chief Procurement Officer Adam Smith. Stipulation of Parties from March 30-31 Hearing, In the matter of Atlanta Duty Free, LLC, Duty Free Air, 07 FCDR 1462, Record at 276, 278-281, 283, 288.
22. There is no evidence that Mayor Franklin participated in the decision to award the duty free contract to the joint venture in which Franklin & Wilson had a minority interest.
23. In November 2004, the Atlanta City Council had legislation pending before it that would have awarded and executed the concession lease agreement with Duty Free Air on behalf of the Department of Aviation. The council did not approve the contract award, but instead voted to file the paper. See Resolution 04-R-0988 (filed Nov. 1, 2004). Subsequently, the city's chief procurement officer cancelled the request for proposal and issued a new proposal seeking bids for a duty free

concession at the airport. Duty Free Air and Franklin & Wilson sued the City of Atlanta seeking to compel immediate execution of a contract based on the 2003 award, but the trial and appellate courts rejected their claim. See Duty Free Air, 07 FCDR 1462 (Ga. May 25, 2007) (affirming trial court's decision that Duty Free is not entitled to a writ of mandamus). In 2007, the Atlanta City Council awarded the duty free concession contract to Aldeasa, SA, and Mayor Franklin approved the legislation. Resolution 07-R-0013 (Jan. 16, 2007).

24. There is no evidence that Mayor Franklin participated in the city's decision that it would not execute the concession lease agreement with the joint venture in which Franklin & Wilson had a minority interest.
25. Mayor Franklin states that she has "steadfastly avoided" any involvement in any decision or other matter related to concession leases at the airport, "she has not discussed those matters with anyone at the City or Atlanta and she does not allow any City employee or official to discuss those matters with her."
26. In sum, there is no evidence that Mayor Franklin has participated in any contract or decision in which she or her immediate family has a financial or personal interest.

Disclosing Financial Assets and Interests

Disclosure of Conflicts of Interest

27. Section 2-813 of the Code of Ethics provides that city officials must disclose any conflict of interest arising when they have a "financial interest or personal interest, direct or indirect, in any proposed legislation or in any decision pending before that official." Since 2006, the disclosure must be made on an online Disclosure of Conflicts of Interest form in the City's Electronic Filing System.
28. Mayor Franklin states that she avoids any involvement in any decisions related to concession leases at the airport and therefore has not had any matter pending before her that would involve any financial or personal interest of her immediate family.
29. There is no evidence that Mayor Franklin failed to disclose any conflict of interest in any decision pending before her arising from her children's financial interests. Prior to July 2006, her adult children did not meet the definition of "immediate family" under the ethics code, and since July 2006 her adult children have not been employed by Franklin & Wilson or had a financial interest in it.

Disclosure of Financial Interests

30. Section 2-814 of the Code of Ethics requires all elected city officials to annually disclose income and other financial assets and interests.
31. There is no evidence that Mayor Franklin has failed to disclose her sources of income, immediate family's transactions with the city, or financial assets on her annual city financial disclosure statement.

32. Subsection 2-814 (a) (1) provides that officials shall disclose “[a]ll positions of employment.”
33. Shirley Franklin disclosed that she holds the position of Mayor of the City of Atlanta in her answer to Question 7 on her 2007 Financial Disclosure Statement.
34. Subsection 2-814 (a) (3) requires officials to disclose any “benefit, whatever its nature, of such official’s or employee’s immediate family derived from transactions with the city or an agency, by employment, contract, or otherwise, either directly or through a business in which such immediate family member has a majority or controlling interest.” Question 15 on the 2007 Financial Disclosure Statement asks: [H]as your . . . child derived any benefit from any transaction with the City directly or through a business in which they have a majority or controlling interest”?
35. Shirley Franklin properly answered “No” to Question 15 on beneficial family transactions with the city since none of her children has a majority or controlling interest in Franklin & Wilson.
36. Subsection 2-814 (a) (5) requires officials to disclose the identity of “all stocks, blind trusts, bonds, debentures, and other forms of debt obligations” of any entity in excess of \$10,000 that they hold, with certain exceptions. Question 17 on the 2007 Financial Disclosure Statement asks: “During 2006, did you hold more than \$10,000 in any stock, bond, blind trust, debenture, or other form of debt obligation of any corporation or business entity”?
37. Shirley Franklin properly answered “No” to Question 17 on investments. In her answer to Question 13 on her 2007 Financial Disclosure Statement, she listed “Clarke-Franklin and Associates (Blind Management Agreement),” as a source of business income. Because a blind management agreement is a different legal entity than a blind trust, she was not required to also disclose the business under Question 17.

No Use of Public Funds for Private Advantage

Credit Card Charge

38. In June 2006, Mayor Franklin requested that the Office of the Internal City Auditor and the Department of Law’s Compliance Unit investigate possible mismanagement of the city’s corporate credit card account with Wachovia Bank. Both offices issued reports. See Office of Internal City Auditor, *Performance Audit: Management and Use of the City’s Credit Card Account 1* (Dec. 2006); Department of Law, *Investigative Report CI 2006 0021: Misuse of City Property (Credit Card) and Use of Position for Private Gain* (Jan. 2007).
39. Section 2-811 prohibits officials and employees from using or permitting the use of public property for the private advantage of the official or any other person or private entity. There is an exception that permits officials to use city property “which is provided as a matter of stated public policy for the use of officials and employees in the conduct of official city business.”

40. The city has had no written policies and procedures governing use of the city credit cards. The city auditor found that the executive offices "did not establish standards for management and use of the card," and practices varied among cardholders about "who could use the card, what types of purchases were acceptable, and how payments should be made." See *Misuse of City Property* at 3-7; *Management of City's Credit Card Account* at 7, 11.
41. The use of a city credit card to make private or personal purchases is a violation of section 2-811 of the Code of Ethics.
42. On January 4, 2005, a charge in the amount of \$1,571.00 was placed on the city credit card assigned to Shirley Franklin to make a purchase at a local gas station. The law department investigated the charge, but has been unable to determine who used the credit card to make the purchase. Mayor Franklin states that she did not personally use the credit card, did not authorize its use for the purchase, and has no personal knowledge of the charge. *Misuse of City Property* at 6.
43. There is no evidence that Mayor Franklin used or permitted the use of a city credit card for a personal purchase or private advantage.

Magazine Ad and Official City Business

44. *Georgia Trend* is a magazine that reports on business and political news in the State of Georgia. In its January 2007 cover story, the magazine announced that it had selected Shirley Franklin as *Georgia Trend's* 2007 Georgian of the Year. Vincent Coppola, "Pragmatic Visionary," *Georgia Trend* (Jan. 2007).
45. In the same issue, the City's Department of Aviation placed a full-page advertisement congratulating Mayor Shirley Franklin for her selection as the 2007 Georgian of the Year. The airport's public relations manager says she made the decision to place the advertisement, which cost \$11,800, after the magazine informed her that the mayor was receiving the award. Telephone interview with Sterling Payne, Public Relations Manager, Sr., Office of Public Affairs, Department of Aviation, June 25, 2007.
46. The mission of the department's Office of Public Affairs is to promote a positive image of Hartsfield-Jackson Atlanta International Airport by disseminating information in a timely, accurate, and persuasive manner. Email from Sterling Payne to Ginny Looney (June 28, 2007). The airport's public relations manager was acting in her official capacity and performing her official duties in choosing to spend \$11,800 from the airport's advertising budget to promote the airport with state and local leaders. Therefore, the use of city funds to purchase the advertisement in *Georgia Trend* magazine was official city business.
47. There is no evidence that Mayor Franklin requested or permitted the use of the airport's advertising funds for the private advantage of any official, employee, or private entity.

Duplicate Claims

48. The claims that Shirley Franklin violated sections 2-802 and 2-818 of the City's Code of Ethics are duplicate claims. The allegations have already been addressed in connection with the claims alleging violations of sections 2-811, 2-812, 2-813, and 2-814.

Conclusion

49. Having reviewed the filings by the parties and investigated the allegations made in the complaints, I find that there is no probable cause to believe that Mayor Shirley Franklin has violated sections 2-802, 2-811, 2-812, 2-813, 2-814, and 2-818 of the City's Code of Ethics.
50. I recommend that the Board of Ethics determine that probable cause does not exist and dismiss all three complaints.

July 3, 2007
Date

GINNY LOONEY
GINNY LOONEY, Ethics Officer